TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 209.

HARRY GUNDLING, PLAINTIFF IN ERROR,

vs.

THE CITY OF CHICAGO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED FEBRUARY 17, 1900.

(17,295.)

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INDEX.

	Original.	Print.
Writ of error	*a*	1
Clerk's certificate that copy of writ of error was lodged in his office	*c*	1
Citation	*d*	2
Proof of service of citation	*e*	2
Clerk's certificate that copy of citation was lodged in his office	*f*	2
Clerk's certificate and return to writ of error	*g*	2
Caption	1	3
Transcript from criminal court of Cook county	2	3
Transcript from police court	3	3
Bond on appeal from police court	5	4
Caption	7	6
Judgment	8	6
Appeal bond	10	7
Bill of exceptions	11	7
Stipulation of facts	12	8
Ordinance of March 1, 1897	13	8
Defendant's requests	18	11
Motion for new trial (overruled)	19	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 25, 1899.

	Original.	Print.
Motion in arrest of judgment (overruled)	20	12
Judge's certificate to bill of exceptions	20	12
Clerk's certificate	21	12
Assignment of errors	21	12
Order denying motion to advance	25	14
Order taking cause under advisement	26	14
Judgment	27	15
Order denying petition for rehearing	28	15
Opinion	29	16
Petition for writ of error	37	21
Bond on writ of error	38	22
Assignment of errors	40	23

a UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Harry Gundling and the City of Chicago, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the
b Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Harry Gundling, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this tenth day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
BROWN,
Asso. Just. Sup. Ct.

c In the Supreme Court of Illinois.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the ninth day of February, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this ninth day of February, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

d UNITED STATES OF AMERICA, *ss:*

To the City of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Harry Gundling is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this tenth day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

e On this 12th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared Lee D. Mathias before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Howard S. Taylor, acting attorney for the city of Chicago in the above-entitled cause.

Sworn to and subscribed the 12th day of January, A. D. 1899.

[Seal of William G. McKnight, Notary Public, Cook County, Ill.]

WILLIAM G. McKNIGHT.

f In the Supreme Court of Illinois.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the ninth day of February, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing citation was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said court this ninth day of February, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

g In the Supreme Court of Illinois.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in

obedience thereto, do hereby certify that the following pages, numbered from one (1) to (thirty-nine), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including a certified copy of the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this ninth day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

1 At a supreme court, begun and held at Springfield, on Tuesday, the fifth day of April, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Jesse J. Phillips, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the sixth day of April, A. D. 1898, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the criminal court of Cook county; which said transcript is in the words and figures following, viz:

2 Be it remembered, to wit, on the 10th day of February, in the year A. D. 1898, there was filed in the office of the clerk of the criminal court of Cook county a certain transcript and appeal bond; which said transcript and appeal bond is in the words and figures following, to wit:

3 *Transcript; Jury Waived.*

STATE OF ILLINOIS, } ss:
City of Chicago, Town of South, }

Police Court, City of Chicago, First District, before George P. Foster, Esq., Justice of the Peace.

CITY OF CHICAGO }
vs.
HARRY GUNDLING. }

Debt for penalty for *in* violation of section 882 of the Revised Ordinances of the City of Chicago.

On written complaint, under oath by C. H. Skelton; warrant issued to Police Officer A. J. Rohan, returnable forthwith; war-

rant returned served by arresting above-named defendant and bringing him into court.

Case called January 11th, 1898, m.; continued to January 21st.

January 21st, case called and continued to January 26th.

Case called for trial January 26th, 1898, m., the plaintiff and defendant present in court.

Defendant pleaded not guilty, defendant first having formally executed a waiver to a jury trial in writing.

4 Witness- sworn and testified, and the court, after hearing all the evidence offered in the case and being fully advised in the premises, find the defendant guilty of selling and exposing for sale within the jurisdiction of the city of Chicago cigarettes without first obtaining a license for that purpose, in violation of section 882 of the Revised Ordinances of the City of Chicago, and doth order and adjudge that the said defendant be, and he is hereby, fined the sum of fifty dollars.

Wherefore it is ordered, considered, and adjudged by the court that the said plaintiff do have and recover of the said defendant the sum of fifty dollars, together with its costs in this behalf expended, to be taxed.

And it is further ordered by the court, in case of default or refusal on the part of the said defendant to pay said fine and costs, that Harry Gundling, the said defendant, be committed to the house of correction, there to be detained until said fine, penalty, and costs shall be fully paid and satisfied.

Provide- such imprisonment shall not exceed the period of six months from the time of his commitment, and that execution therefor —.

I certify that this transcript contains a full and perfect statement of all the proceedings before me in the above-entitled cause.

GEORGE P. FOSTER,
Justice of the Peace.

5

Fine	$50.00
Costs	1.50
	$51.50

Witnesses: C. H. Skelton, Office- A. J. Rohan, cent. station.

CHARLES F. HEALEY,
Clerk Police Court.

Know all men by these presents that Harry Gundling, as principal, and Joseph B. Moos, as surety, are held and firmly bound unto the City of Chicago in the penal sum of one hundred and three ($103.00) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this 8the day of February, 1898.

The condition of the above obligation is such that whereas the said City of Chicago did, on the 26th day of January, A. D. 1898,

before George P. Foster, Esq., a justice of the peace for the said city of Chicago, recover a judgment against the above-bounden Harry Gundling for the sum of fifty ($50.00) dollars and costs, amounting to one dollar and fifty cents ($1.50), from which judgment the said Harry Gundling has taken an appeal to the criminal court of Cook county, Illinois, now, if the said Harry Gundling shall prose-
6 cute his appeal with effect and pay whatever judgment shall be rendered against him by said court upon the trial of said appeal, or by consent or in case the appeal is dismissed, or in case the matter in controversy is settled between the parties to the action without trial by the court appealed to, will pay the judgment rendered against him by said police magistrate and all costs occasioned by said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

HARRY GUNDLING. [SEAL.]
JOSEPH B. MOOS. [SEAL.]

Approved by me this 9th day of February, A. D. 1898.

GEO. P. FOSTER, *J. P.*

Filed February 10th, 1898.

ERNEST MAGERSTADT, *Clerk.*

STATE OF ILLINOIS, } ss:
Cook County, }

Joseph B. Moos, being duly sworn, deposes and says that he is the person who signed the appeal bond of Harry Gundling in the case in which said Gundling was fined fifty ($50.00) dollars and costs by Justice George P. Foster, of the Harrison Street police station, on the 26th day of January, A. D. 1898.

Affiant further says that he is worth the sum of one thousand ($1,000) dollars; that he owns in fee-simple the following-
7 described real estate, known as No. 1814 Oakdale Ave., Chicago; that said property is worth the sum of thirteen thousand dollars, and that said real estate is unincumbered.

And further affiant saith not.

JOSEPH B. MOOS.

Subscribed and sworn to before me this eighth day of Feb., A. D. 1898.

VERNE S. PEASE,
Notary Public.

[NOTARY PUBLIC.]

UNITED STATES OF AMERICA,
State of Illinois, Cook County, } *ss*:

Pleas before a brance of the criminal court of Cook county and State ——, at a term thereof begun and held at the criminal court house, in the city of Chicago, in said county, on the first Monday (being the seventh day) of February, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

Present: Honorable William G. Ewing, judge of the superior court of Cook county and *ex officio* judge of the criminal court
8 of Cook county; Charles S. Deneen, State's attorney; James Pease, sheriff of Cook county.

Attest: ERNEST J. MAGERSTADT, *Clerk.*

And afterwards, to wit, on the 5th day of March, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in said court; which said proceedings are in the words and figures following, to wit:

CITY OF CHICAGO
vs. } 13866. Appeal.
HARRY GUNDLING.

This day come the parties hereto, by their respective attorneys, and by agreement of all parties now here made in open court this cause is submitted to the court for trial — the intervention of a jury waived.

Thereupon the court, upon hearing the testimony of witnesses and arguments of counsel and now being fully advised in the premises, finds the defendant guilty, and assesses the fine herein at fifty dollars.

Therefore it is considered by the court that the said defendant be fined in the penal sum of fifty dollars for the benefit of the
9 said plaintiff and pay all the costs of these proceedings, and that execution issue therefor.

Thereupon the defendant, by his attorney, moves the court for a new trial in this cause; and the court, having heard the arguments of counsel and being now fully advised in the premises, doth overrule said motion and orders that said motion be, and the same is hereby, overruled accordingly.

To which order of the court in overruling said motion the defendant, by his attorney, duly excepts.

Thereupon the defendant, by his attorney, moves the court in arrest of judgment in this cause; and the court, having heard the arguments of counsel and being now fully advised in the premises, doth overrule said motion and orders that said motion be, and the same is hereby, overruled accordingly.

To which order of the court in overruling said motion the defendant, by his attorney, duly excepts.

To which order and judgment of the court the said defendant, by his attorney, now hereby excepts and prays an appeal to the supreme court of the State of Illinois, which is granted upon the condition that the said defendant doth within twenty days from date file an appeal bond in the penal sum of two hundred and fifty dollars, with surety to be approved by this court, and that he also doth within twenty days from date prepare and file his bill of exceptions herein.

10 And afterwards, to wit, on the 24th day of March, in the year last aforesaid, it being the term of court aforesaid, there was filed in the office of the clerk of the criminal court of Cook county a certain appeal bond; which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we, Harry Gundling, as principal, and Joseph B. Moos, as surety, of the county of Cook and State of Illinois, are held and firmly bound unto the City of Chicago in the penal sum of two hundred and fifty dollars ($250), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally and firmly, by these presents.

Witness our hands and seals this 23rd day of March, A. D. 1898.

The condition of the above obligation is such that whereas the said City of Chicago did, on the 5th day of March, A. D. 1898, in the criminal court of Cook county, in the State aforesaid, and of the February term thereof, A. D. 1898, recover a judgment against the above-bounden Harry Gundling for the sum of fifty dollars ($50.00), besides costs of suit, from which said judgment of the said criminal court of Cook county the said Harry Gundling has prayed

11 for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said Harry Gundling shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

HARRY GUNDLING. [SEAL.]
J. P. MOOS. [SEAL.]

Approved:
W. G. EWING, *Judge.*

And afterwards, to wit, on the 24th day of March, in the year last aforesaid, it being the term of court aforesaid, there was filed in the office of the clerk of the criminal court of Cook county a certain bill of exceptions; which said bill of exceptions is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

Criminal Court of Cook County.

12 CITY OF CHICAGO }
vs.
HARRY GUNDLING. }

Bill of Exceptions.

Be it remembered that on the trial of this case in this term (trial by jury being waived in writing by the defendant) this cause was submitted to the court upon the following stipulation of facts:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Criminal Court of Cook County, February Term, A. D. 1898.

CITY OF CHICAGO }
vs. } No. 13866.
HARRY GUNDLING. }

Stipulation of Facts.

It is hereby agreed by and between the parties hereto that trial by jury be, and the same is hereby, waived and the
13 cause submitted to the trial by the court without the intervention of a jury upon the following statements of fact:

It is hereby mutually agreed that the city of Chicago is a municipal corporation organized and existing under and by virtue of an act of the General Assembly of the State of Illinois entitled "An act to provide for the incorporation of cities and villages," approved April 10, 1872, in force July 1, 1872; L. 1871–'2, p. 218; R. S. 1897, chap. 24; that the common council of the said city of Chicago has all the powers conferred upon the common councils of cities by the said act.

It is further agreed that on, to wit, the first day of March, A. D. 1897, the common council of the said city of Chicago passed the following ordinance:

"Be it ordained by the city council of the city of Chicago:

"SECTION 1. The mayor of the city of Chicago shall from time to time grant licenses authorizing the sale of cigarettes within the city of Chicago, in the manner following and not otherwise.

"Any person, firm or corporation desiring a license to sell cigarettes shall make written application for that purpose to the commissioner of health in which shall be described the location at which such sales are proposed to be made. Said application shall be accompanied by evidence that the applicant, if a single individual, all the members of the firm if a copartnership, and person or persons in charge of the business, if a corporation, is or are per-

sons of good character and reputation. The commissioner
14 of health shall thereupon submit to the mayor the said application with the evidence aforesaid, with his opinion as to the propriety of granting such license, and if the mayor shall be satisfied that the persons before mentioned are of good character and reputation and are suitable persons to be entrusted with the sale of cigarettes, he shall issue a license in accordance with such application, upon such applicant filing a bond payable to the city of Chicago, with at least two sureties, to be approved by the mayor, in the sum of $500, conditioned that the licensed person, form or corporation shall faithfully observe and obey all laws of the State of Illinois and ordinances of the city of Chicago now in force or which may hereafter be passed, with reference to cigarettes; provided, however, that nothing herein contained shall be held to authorize the sale of cigarettes containing opium, morphine, jimson weed, belladonna, glycerine or sugar.

"SECTION 2. Every person, on compliance with the aforesaid requirements and the payment in advance to the city collector, at the rate of $100 per annum, shall receive a license under the corporate seal, signed by the mayor and countersigned by the clerk, which shall authorize the person, firm or corporation therein named to expose for sale, sell, or offer for sale cigarettes at the place designated in the license; provided, that no license shall be granted to sell within 200 feet of a school-house.

"SECTION 3. Every license so granted shall be at the rate of $100 per annum. The municipal year shall begin May 1st, 1897, and on May 1st of every subsequent year during the continuance of this ordinance. Provided, however, that in no case shall the
15 license extend beyond the municipal year. Such license may be issued for the unexpired portion of a municipal year, upon the payment in advance at the rate fixed by the ordinance and proof furnished by the commissioner of health to the city collector, that the applicant was not liable for license, nor were any cigarettes sold at the place of business without a license, prior to date fixed in his application.

"SECTION 4. Any license so granted may be revoked upon written notice by the mayor whenever it shall appear to his satisfaction that the party so licensed shall have violated any provisions of the laws of the State of Illinois or of any ordinance of the city of Chicago relating to cigarettes, or any condition of the bond aforesaid.

"SECTION 5. Any and all persons licensed under this ordinance or any ordinance for the sale of cigarettes shall immediately cause to be and remain posted upon some conspicuous part of the room or place where cigarettes are sold or exposed for sale, his or their license.

"SECTION 6. Any person so licensed who shall not cause such license to be and keep the same posted as required by the preceding section, or who not being licensed shall cause or permit any paper or document purporting to be a license to be or remain posted as aforesaid, shall on conviction be fined a sum of not exceeding one hundred dollars.

"SECTION 7. It shall be the duty of the commissioner of health and he is hereby authorized and empowered from time to time
16 to inspect and examine all places where cigarettes are licensed to be sold within the city of Chicago, with a view of ascertaining whether the laws of the State of Illinois and the ordinance of the city in relation to the sale of cigarettes are being complied with at such place, and it shall be his duty to cause all such laws and ordinances to be rigorously enforced; and it shall be the duty of all persons, firms or corporations licensed to sell cigarettes within the city of Chicago, upon demand of the commissioner of health, to furnish to said commissioner for *in* his inspection samples of all cigarettes sold or offered for sale by them, which samples of cigarettes shall be analyzed by or under the direction of said commissioner of health and a record of such analysis shall be made and kept in his office for the inspection of the public.

"SECTION 8. Any person who shall hereafter have or keep for sale or expose for sale or offer to sell any cigarettes at any pl-ce within the city of Chicago without having first procured the license as above provided shall be fined not less than fifty dollars and not exceeding two hundred dollars for every violation of this ordinance, and a further penalty of $25 for each and every day the person, firm or corporation persists in such violation after a conviction for the first offense.

"SECTION 9. This ordinance shall be in force from and after its passage and due publication."

That the said ordinance was duly published and approved
17 and that it has not been repealed.

It is further agreed that section 882 of the Revised Ordinances of the City of Chicago is in the words and figures the same as section 8 of the hereinbefore-mentioned ordinance.

It is further agreed that on or about the 31st day of December, A. D. 1897, the defendant, Harry Gundling, did have, keep, and expose for sale, and offered to sell, cigarettes at the northeast corner of Dearborn and Monroe streets, within the city of Chicago, without having first procured a license as provided in said ordinance; that said Harry Gundling was on the ninth day of Janurary, A. D. 1898, pursuant to the written complaint, under oath, by one C. H. Skelton and a warrant issued to Police Officer A. J. Rohan out of the court of George P. Foster, a justice of the peace for the city of Chicago, arrested for said act alleged to be in violation of the said ordinance, and upon the trial thereof on, to wit, the twenty-sixth day of January, A. D. 1898, was found guilty as charged and fined in the sum of fifty dollars ($50), as will by the record in this case more fully appear; that an appeal was taken from the said judgment on, to wit, the ninth day of February, A. D. 1898, to this court, as will by the record in this cause more fully appear.

Witness our hands this 5th day of March, A. D. 1898.

18 HOWARD S. TAYLOR,
Pros. Att'y for the City of Chicago.
CHARLES H. ALDRICH,
Att'y for Harry Gundling.

Which was all the evidence offered either on behalf of the plaintiff or the defendant.

And that thereupon defendant, by his counsel, requested the court to hold each and all of the following propositions as the law of this case:

I.

That the common council of the city of Chicago had and has no power to enact the ordinance pursuant to the provisions of which this prosecution is based.

II.

That the ordinance of the city of Chicago upon which the defendant is prosecuted in this case is illegal and void.

III.

That the ordinance of the city of Chicago upon which the defendant is prosecuted is illegal and void, depriving persons of liberty and property without due process of law, in violation of the Constitution of the United States of America and of the State of Illinois.

19 IV.

That the ordinance of the city of Chicago upon which the prosecution of the defendant is based is in contravention of that provision of the Constitution of the United States which provided, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and is therefore illegal and void.

V.

That the defendant is not guilty.

But the court refused to hold these propositions and each of them as the law of this case; to which decision of the court in refusing to hold the same and each of them as the law of this case the defendant, by his counsel, then and there excepted.

And thereupon the court found the defendant guilty as charged, and assessed a fine of fifty dollars ($50.00) and costs against him.

Whereupon the defendant, by his counsel, then and there moved the court to set aside the findings so rendered and grant a new trial in this case, and filed the following reason in writing for his motion, to wit:

That the finding of the court is contrary to the law.

But the court denied the motion, and gave judgment on
20 the findings against the defendant; to which decision of the court in denying such motion the defendant, by his counsel, then and there excepted.

Whereupon the defendant, by his counsel, moved the court in arrest of judgment, and filed the following reasons in writing for his motion, to wit:

1st. That the court had no jurisdiction in this cause.

2nd. That the imposition of the said judgment in this case is in contravention of the Constitution of the State of Illinois and of the United States of America as depriving the defendant of liberty and property without due process of law, abridging his privileges and immunities as a citizen of the United States, and denying to him the equal protection of the law.

But the court denied the motion; to which decision of the court in denying such motion the defendant, by his counsel, then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record, the defendant tenders this his bill of exceptions, and prays that the same may be signed and sealed by the judge of this court pursuant to the statute in such case made and provided, which is accordingly done this 5th day of March, A. D. 1898.

WILLIAM G. EWING, [SEAL.]
Judge Superior Court, Cook County, Illinois.

21 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Ernest J. Magerstadt, clerk of the criminal court of Cook county, in said county and State, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record in a certain cause lately pending in said court, wherein The City of Chicago were plaintiffs and Harry Gundling defendant.

Witness Ernest J. Magerstadt, clerk of said court, and the seal thereof, at Chicago, in said county, this 24th day of March, A. D. 1898.

[COURT SEAL.] ERNEST J. MAGERSTADT, *Clerk.*

In the Supreme Court of Illinois.

HARRY GUNDLING, Appellant, }
vs.
CITY OF CHICAGO, Appellee. }

22 Now comes the appellant, by Charles H. Aldrich, his attorney, and says that manifest error intervenes in this record in this, to wit:

1. That the court below erred in refusing to hold, as requested by the defendant, the following propositions as the law of this case:

I.

That the common council of the city of Chicago had and has no power to enact the ordinance pursuant to the provision of which this prosecution is based.

II.

That the ordinance of the city of Chicago upon which the defendant is prosecuted in this case is illegal and void.

III.

That the ordinance of the city of Chicago upon which the defendant is prosecuted is illegal and void, depriving persons of liberty and property without due process of law, in violation of the Constitution of the United States of America and of the State of Illinois.

IV.

That the ordinance of the city of Chicago upon which the prosecution of the defendant is based is in contravention of that provision of the Constitution of the United States which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor
23 shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and is therefore illegal and void.

V.

That the defendant is not guilty.

2. That the court below erred in refusing to hold, as requested by the defendant, that the common council of the city of Chicago had and has no power to enact the ordinance pursuant to the provisions of which this prosecution is based.

3. That the court below erred in refusing to hold, as requested by the defendant, that the ordinance of the city of Chicago upon which the defendant is prosecuted in this case is illegal and void.

4. That the court below erred in refusing to hold, as requested by the defendant, that the ordinance of the city of Chicago upon which the defendant is prosecuted is illegal and void, depriving persons of liberty and property without due process of law, in violation of the Constitution of the United States of America and of the State of Illinois.

5. That the court below erred in refusing to hold, as requested by the defendant, that the ordinance of the city of Chicago upon which the prosecution of the defendant is based is in contravention of that provision of the Constitution of the United States which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United
24 States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and is therefore illegal and void.

6. That the court below erred in refusing to hold, as requested by the defendant, that the defendant is not guilty.

7. That the court below erred in finding the defendant guilty and assessing a fine of fifty dollars ($50) and costs against him.

8. That the court below erred in overruling the motion of the defendant for a new trial.

9. That the court below erred in giving judgment on its finding against the defendant.

10. That the court below erred in overruling the motion of the defendant in arrest of judgment.

Wherefore the appellant prays that the decision of the court below in this case be in all things reversed.

CHARLES H. ALDRICH,
Attorney for Appellant.

25 And afterwards, to wit, on the 18th day of April, A. D. 1898, certain proceedings were had and orders made by said court and entered of record, among which is the following, viz:

HARRY GUNDLING
vs.
CITY OF CHICAGO. } 254. Appeal from Criminal Court, Cook County.

And now, on this day, the court, having duly considered the motion of appellant to advance this cause for hearing and being fully advised of and concerning the premises, overrules and denies said motion.

And afterwards, to wit, on the 19th day of April, A. D. 1898, certain proceedings were had and orders made by said court and entered of record, among which is the following, viz:

26 HARRY GUNDLING
vs.
CITY OF CHICAGO. } Appeal from Criminal Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing and the clerk of this court reporting that said cause is now ready to be taken and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

27 At a supreme court begun and held at Springfield, on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice;

Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the twenty-fourth day of October, A. D. 1898, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

HARRY GUNDLING *v.* CITY OF CHICAGO. } No. 254. Appeal from Criminal Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error, therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant its costs by it in this behalf expended, and that it have execution therefor.

28 At a supreme court begun and held at Springfield, on Tuesday, the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the seventh day of December, A. D. 1898, certain proceedings were had and orders made by said court and entered of record, among which is the following, viz:

HARRY GUNDLING *vs.* CITY OF CHICAGO. } 254. Appeal from Criminal Court, Cook County.

Now, on this day, this cause coming on to be heard upon the petition of the appellant for a rehearing herein and the court being

now duly advised in the premises, it is considered and ordered by the court that said petition for a rehearing be overruled and denied; and it is further considered by the court that said petitioner pay the costs and charges herein taxed.

29 At a supreme court begun and held at Springfield, on Tuesday, the 4th day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the 24 day of October, 1898, the opinion of the court was filed in the words and figures following, to wit:

HARRY GUNDLING *vs.* CITY OF CHICAGO. } No. 147. Appeal from Criminal Court, Cook.

30 Docket No. 254. Agenda 72. Northern Div. April, '98.

HARRY GUNDLING *v.* CITY OF CHICAGO.

Mr. Justice PHILLIPS delivered the opinion of the court:

This case was tried on an agreed statement of facts, which showed that the city of Chicago, by its city council, adopted an ordinance which provides by section 1 that the mayor shall, from time to time, grant licenses authorizing the sale of cigarettes. It further provides what formalities shall be observed by the applicant in making his application, such as a bond to obey the laws, affidavit of good character and reputation, etc., and gives to the mayor a discretion to determine whether a license shall be issued. Section 2 provides for a license fee of $100 per year, and that no license shall be granted to sell cigarettes within two hundred feet of a school-house. Section 3 provides that every license granted shall be at the rate of $100 per year. Section 4 grants the power to the mayor to revoke any license for cause. Sections 5 and 6 provide the manner of selling cigarettes. Section 7 makes the commissioner of health the general supervisor and inspector to see that the sale of cigarettes is carried on according to law. Section 8 prescribes the penalty for the violation of the terms of the ordinance. Section 9 is, that the ordinance shall be in force after its due passage and publication. The statement further shows that appellant, on or about the 31st day of December, 1897, while said ordinance was in force and after the same

had been duly published, did have, keep and expose for sale and offer to sell cigarettes within the city of Chicago without having first procured a license, as required by said ordinance.

The defendant was convicted before a justice of the peace and a fine of $50 and costs entered against him, from which he prosecuted an appeal to the criminal court of Cook county, where, on trial on the foregoing statement of facts, he was found guilty and a fine of $50 assessed against him. Motions for a new trial and in arrest of judgment were overruled, to which he excepted, and judgment was entered against him.

The defense was based on the ground that the ordinance in question, as enacted by the city council, was not within the powers
31 delegated to the city by the legislature and hence was null and void, and that the ordinance and judgment of the court deprived the appellant of liberty and property without due process of law, in violation of the constitution of the State of Illinois and of the fourteenth amendment of the Constitution of the United States, which latter in part provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The contention of appellee is, the power to enact this ordinance is expressly granted by paragraph 50 of section 1 of article 5, chapter 24, of our Revised Statutes, which provides the common councils of cities shall have power "to regulate the sale of meats, poultry, fish, butter, cheese, lard, vegetables and all other provisions, and to provide for place and manner of selling the same." The power to license and regulate the sale of cigarettes, it is contended, is included within that paragraph, and that the term "all other provisions" includes tobacco in the list of enumerated articles by the language as used.

The articles, meats, poultry, fish, butter, cheese and lard, which are expressly enumerated in the above paragraph and the power expressly given therein to regulate the sale thereof, are articles of food for man, and include by the express enumeration of articles only provisions to be used for man. The term "other provisions," by a familiar canon of construction, can extend only to articles of the same character as those specifically enumerated. When general words follow an enumeration of particular things, such words must be held to include only such things or objects as are of the same kind as those specifically enumerated. (*In re* Swigert, 119 Ill., 83; Cecil *v.* Green, 161 *id.*, 265; Emmons *v.* City of Lewistown, 132 *id.*, 380.) Lexicographers have given to the term "provisions" a broader meaning than that of food for man. The meaning of general terms used in a statute, or in one section thereof, may be often determined from the connection in which the language is used and the purpose to be subserved. Paragraph 50 above, providing for the regulation of the sale of certain enumerated articles of food for man of daily consumption, followed by the general

term "all other provisions," cannot be held to include in the
32 term "all other provisions" such an article as tobacco in any of its various forms. Although it may be an article of frequent use, yet it is not included within the meaning of the term "food for man." The contention of appellant is that no express power is given to regulate the sale of tobacco by the provisions of paragraph 50. We hold that contention of appellant must be sustained, and that by paragraph 50 no power is given to the city council to regulate the sale of tobacco.

It is insisted by appellee that if no express authority for licensing the sale of cigarettes is given under paragraph 50 above quoted, the power exists as an implied power under paragraphs 53, 66 and 78 of said section 1, which provides as follows:

"Fifty-third. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, cotton, tobacco, flour, meal and other provisions."

"Sixty-sixth. To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

"Seventy-eighth. To do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease."

An ordinance may derive its validity from several different grants of power, and not depend solely upon any single section or clause of a statute. (Kinsley *v.* City of Chicago, 124 Ill., 359.) An implied power of a municipal corporation is a power necessarily incident to the exercise of those powers expressly granted and directly and immediately appropriate to their exercise. (People *ex rel. v.* Chicago Gas Trust Co., 130 Ill., 268; Chicago and Northwestern Railway Co. *v.* City of Chicago, 148 *id.*, 141; Mather *v.* City of Ottawa, 114 *id.*, 659.) The power to regulate the sale of an article includes the power to require a license to authorize the sale thereof. (Farwell *v.* City of Chicago, 71 Ill., 269; Chicago Packing Co. *v.* City of Chicago, 88 *id.*, 221; Kinsley *v.* City of Chicago, *supra.*) The licensing of a sale of an article is a legitimate means of regulating its sale. (Chicago Packing Co. *v.* City of Chicago, *supra.*) By the paragraphs above quoted power is expressly given the city to provide for and regulate the inspection of various enumerated articles, including tobacco, and this would include the various forms in which that product is prepared and used. The purpose of conferring this power of pro-
33 viding for and regulating the inspection of those various enumerated articles is to subserve the public welfare and protect the public health. The measure has relation to the public health and is required in that interest. With this object evidently in view the legislature passed an act approved June 15, 1887, in force July 1, 1887, entitled "An act to prohibit selling, giving or furnishing tobacco, in any of its forms, to minors, and providing a penalty therefor." Section 1 of said act provides: "That hereafter no person or persons in this State shall sell, buy for or furnish any cigar or cigarette, or tobacco in any of its forms, to any

minor under sixteen years of age, unless upon the written order of parent or guardian." Section 2 provides that if any person or persons shall violate the provisions of section 1, he, she or they shall, on conviction thereof, forfeit and pay for each offense the sum of $20. The object and purpose of this enactment were to subserve and protect the health and welfare of the class of persons to whom the act refers and to whom a sale is forbidden. The consensus of opinion in reference to the use of cigarettes is, that they are injurious to the young with immature minds, and common observation causes us to know that tobacco in the form of cigarettes is more largely used by those of young and immature minds than by any other class.

It is urged by appellant that the city council has no right to single out a particular form of manufactured tobacco and provide for its regulation, and require a license for its sale, without making the requirement apply to all the forms in which tobacco may be used. It being well known that young persons of weak and immature minds are more liable to use tobacco in the form of cigarettes than in any other form, a legislative body may properly provide for the regulation and sale of that article in the form in which it is likely to be most deleterious and injurious, and may restrict the sales of that particular form of tobacco. Paragraph 66 before quoted expressly authorizes the adoption of ordinances necessary to police power, and paragraph 78 is an express authorization of the city council to make all regulations necessary or expedient for the promotion of health or the suppression of disease. Under these two provisions express authority is granted the municipality to pass all ordinances or requirements tending to promote the public health, morals, security, comfort and welfare of the community.
34 Such legislation is included within the provision authorizing the enactment of police regulations. The most important of police powers is that of caring for the health of the community, and that is inherent in a municipality, and may be exercised whether expressly granted or not, because the preservation of the health of the public is indispensable to the existence of the municipal corporations. Ferguson *v.* City of Selma, 43 Ala., 400.

The regulation of the police power is hardly susceptible of exact definition, as the exigencies of each case are varying, and the cases are innumerable where the health of the inhabitants of the municipality may be in some degree endangered. When the city council considers some occupation or thing dangerous to the health of the community, and in the exercise of its discretion passes an ordinance to prevent such a danger, it is the policy of the law to favor such legislation as being humane and essential to the preservation and protection of the community. Municipalities are allowed a greater degree of liberty of legislation in this direction than any other. The necessity for action is often more urgent and the consequences of neglect are more detrimental to the public good in this than in any other form of local evil. It being clear that the public health and welfare of a large class in the community would be subserved and

protected by ordinances regulating the sale of tobacco in one of its manufactured forms, an ordinance directed to the protection of the health or welfare of that particular class of the community would be a police regulation within the power of a city to enact under the power expressly granted by paragraphs 66 and 78. An ordinance of this character is not in conflict with any principle of the common law or with any public or general statute, and infringes no private right not necessarily infringed in the interests of good government. It subserves the public welfare, protects the health of the community, and is included within the express powers granted the city council. The ordinance was not void.

Neither did the ordinance and the judgment of the court deprive the appellant of liberty or property without due process of law. The city having the authority to enact the ordinance and provide a penalty for its violation, which ordinance applies to all citizens within the community, no principle of the constitution of the State of Illinois or of the United States, or the amendments thereto, was violated.

Appellant insists that the ordinance is void because it delegates to the mayor the power to determine whether the license should be granted. In Swarth *v.* People, 109 Ill., 621, it was said (p. 626): "It is true, the ordinance prescribing the duties of the mayor in issuing licenses says that he shall, under certain circumstances, 'grant' licenses to certain persons, while the statute authority to 'grant' such licenses is given only to the city council; but the substance of the ordinance is that the city council grants licenses to a certain class of persons upon certain conditions by authorizing the mayor to 'grant'—that is, to issue—or cause license to be issued when the conditions are complied with. This is not a delegation to the mayor of the power of the council. We see no objection to the form in which this power of the council is exercised or the mode in which the license was issued." The ordinance, by its terms, fixes the rate per annum to be charged for a license, and regulates the price and object of sale of the particular article to which it refers, all of which is enacted by the city council. That license is to be granted or issued by the mayor, and thus carrying out the express will of the city council as to issuing the license is not exercising a power conferred on the city council, but is a method by which the council exercises its power as to the manner in which the license is to be issued. In this there is no delegation to the mayor of the power of the city council. The appellant, however, is not in a position to raise this question, from the facts appearing in this record. He was not an applicant for a license, which had been refused him, but was before the court admitting that he had violated an ordinance of the city of Chicago duly passed and published, and denying the right of the city to adopt such ordinance regulating the sale of cigarettes. He is not in a position to invoke the judgment of this court as to his right to a license, nor is that question before us.

We are of the opinion that the ordinance was within the express powers granted to the city council, and the judgment of the court

was not violative of any provision of the State or Federal constitution.

The judgment of the criminal court of Cook county is affirmed.

Judgment affirmed.

36 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, Oct. 24, 1898.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

[Endorsed:] Cigarette licenses. Opinion in Gundling *v.* Chicago.

37 Supreme Court of the United States.

HARRY GUNDLING }
—
CITY OF CHICAGO. }

Petition for Writ of Error.

And now comes Harry Gundling, plaintiff herein, and says that on or about the 24th day of October, A. D. 1898, this court entered judgment herein in favor of the defendant and against the plaintiff, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear in the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

CHARLES H. ALDRICH,
Attorney for Plaintiff.

(Endorsed:) "Filed Feb. 9, 1899. C. Mamer, clerk."

38 And afterwards, to wit, on the 9th day of February, A. D. 1899, there was filed in the office of the clerk of said court a

certain bond; which said bond is in the words and figures as follows, viz:

Know all men by these presents that we, Harry Gundling, as principal, and Joseph B. Moos, as surety, are held and firmly bound unto the City of Chicago in the *the* full and just sum of two hundred and fifty dollars ($250), to be paid to the said City of Chicago or its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a supreme court of the State of Illinois, in a suit depending in said court between Harry Gundling and the City of Chicago, a judgment was rendered against the said Harry Gundling, and the said Harry Gundling having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Chicago, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Harry Gundling shall prosecute the writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HARRY GUNDLING. [SEAL.]
JOSEPH B. MOOS. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved:
H. B. BROWN,
Associate Justice of the Supreme Court U. S.

39 STATE OF ILLINOIS, } ss:
Cook County, }

Joseph B. Moos, being duly sworn, deposes and says that he is the person who signed the bond of Harry Gundling as surety in the case in the supreme court in which Harry Gundling is plaintiff in error and The City of Chicago is defendant in error.

Affiant further says that he is worth the sum of five hundred dollars ($500), and that he owns in fee-simple the following-described real estate known as house and lot No. 1814 Oakdale Ave., Chicago: The east 25 feet of lot 15, in Homewood, sec. 28, T. 40, R. 14; that said property is worth the sum of thirteen thousand dollars ($3,000.00); that said real estate is unincumbered.

And further affiant saith not.

JOSEPH B. MOOS.

Subscribed and sworn to before me this 31st day of December, A. D. 1898.

WILLIAM G. McKNIGHT,
Notary Public.

[SEAL.]

40 In the Supreme Court of the United States.

HARRY GUNDLING, Plaintiff in Error,
vs.
CITY OF CHICAGO, Defendant in Error.

On Writ of Error to the Supreme Court of the State of Illinois.

Assignment of Errors.

And now comes Harry Gundling, plaintiff in error, and says that manifest errors appear in the record herein in this, to wit:

1. The court erred in holding that the ordinance of the city of Chicago set out in the record, and for a violation of which the plaintiff in error was convicted, was authorized by the act authorizing municipal corporations in the State of Illinois—

"Fifty-third. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, cotton, tobacco, flour, meal and other provisions."

"Sixty-sixth. To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

"Seventy-eighth. To do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease."

or all of these, and that consequently the plaintiff in error was not, by reason of the conviction set out in the record, deprived
41 of liberty or property without due process of law, in violation of the Constitution of the United States.

2. That the court below erred in holding that the ordinance set out in the record was an authorized exercise of municipal power, and that the defendant could therefore rightfully be prosecuted thereunder for a violation of its provisions, and that such prosecution and conviction did not deprive the plaintiff in error, as claimed by him in the trial court and in the supreme court of the State of Illinois, of rights guaranteed to him under the Constitution of the United States and the fourteenth amendment thereof.

3. That the court below erred in holding that the ordinance set out in the record was not unconstitutional under the fourteenth amendment of the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

For all of which errors the plaintiff in error prays that the judgment and decree of the said supreme court of the State of Illinois may be in all respects reversed and held for naught.

CHARLES H. ALDRICH,
Attorney for Plaintiff in Error.

Endorsed on cover: File No., 17,295. Illinois supreme court. Term No., 209. Harry Gundling, plaintiff in error, *vs.* The City of Chicago. Filed February 17th, 1899.